



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diversified Computer Consultants

File: B-229765

Date: February 19, 1988

DIGEST

Where an offeror submits a technically acceptable proposal which contains a flaw in its discount terms, the agency may not properly reject the entire proposal for this reason where the award is based on lowest price received, and where the proposal may be low even without consideration of the flawed discount terms.

DECISION

Diversified Computer Consultants (DCC) protests the award of a fixed-price contract to Planned Systems Europa, Inc. (PSE), under request for proposals (RFP) No. DAJA37-87-R-0649, issued by the Army Contracting Center, Europe, for maintenance of government-owned computer equipment at a location in West Germany. DCC principally contends that the Army failed to properly evaluate certain line item costs and awarded the contract to other than the low offeror contrary to the terms of the solicitation.

We sustain the protest.

The RFP, issued on August 17, 1987, provided that the government would award a contract, on an all-or-none basis, to the responsible offeror whose offer conforming to the solicitation is the most advantageous to the government, cost or price and other factors considered. While the RFP stated that the government reserved the right to consider acceptable only those proposals submitted in accordance with all technical requirements, the RFP did not contemplate the submission of technical proposals and did not contain technical criteria for comparative evaluation of the merits of proposals. Thus, the competition was essentially based on price alone. In this regard, the RFP contained 234 line items for which offerors were required to submit prices.

041307

Initial proposals were received on September 24. DCC offered the following terms and prices for the line items at issue:

<u>CLIN</u>	<u>DESCRIPTION</u>	<u>PRICE</u>
"0231	Maintenance Outside Vendor's normal working hours** . . . (There are approximately 30 calls per year)	Hourly Rate Charge: <u>\$190.00/Hour</u>
"0231A **	Diversified Computer Consultants will provide Two (2), Four (4) hour OPPM maintenance calls [outside principal period of maintenance, i.e., outside normal working hours], per month at no charge, for every remedial maintenance call placed prior to end of PPM. [principal period of maintenance, i.e., 6 p.m.]	Hourly Rate Charge: <u>No Charge</u>
"0232	Travel Time (Travel time is vendor's hourly wage outside the principal period of maintenance, CLIN 0219, from the customer engineer's residence to the government's installation. Travel rate must also be listed under CLIN 0232.) [For evaluation purposes, amendment 2 estimated approximately 30 calls per year for CLINS 0232, 0233, and 0234.]	Rate Per Mile/KL: 25 cents <u>Per Mile</u>
"0233	2d LEVEL TECHNICAL SUPPORT SPECIALIST	Hourly Rate Charge: <u>\$190.00/Hr.</u>
"0234	3d LEVEL TECHNICAL SUPPORT SPECIALIST	Hourly Rate Charge: <u>\$190.00/Hr."</u>

CLIN 0231A did not exist in the solicitation's schedule; rather, DCC inserted that line item to express its discount for maintenance outside normal working hours.

The Army conducted discussions with the offerors, including DCC. At no time during these discussions did the Army express any dissatisfaction or point out as a deficiency the pricing methodology employed by DCC for these CLINS, including CLIN 0231A. Best and final offers (BAFOs) were received on October 22. Most offerors, including DCC, did not revise, but merely confirmed, their initial prices. Evaluation of BAFOs revealed that while the prices submitted

were generally in the range of \$20,000 per month, the difference between PSE's price and DCC's price was only \$86 per month. However, the Army admits that these evaluation results were flawed because it mistakenly failed to evaluate CLINS 0231, 0232, 0233 and 0234. Thus, the evaluated prices reflected only CLINS 1-230. Award to PSE was based on this flawed evaluation.

Further, during this flawed evaluation prior to award, the Army disqualified DCC's offer from the competition, rejecting it as unacceptable. Specifically, the Army determined that DCC's discount (CLIN 0231A) was based on a "condition subsequent," requiring the government to place maintenance calls prior to the end of normal working hours to be eligible for free calls after working hours. Since the Army did not know how many such calls could be placed prior to the end of working hours or how many such free maintenance calls it would earn, the Army determined that DCC's offer was a "qualified offer," and rejected the proposal in its entirety. The Army had initially determined that DCC would have been the low offeror if its "free service calls" had been considered.

In response to complaints from offerors, the Army reevaluated proposals after award to include the omitted line items (DCC's rejected proposal was not reevaluated). The Army states that, excluding DCC, the same results were obtained after reevaluation so that offerors were not prejudiced by the prior faulty evaluation. However, the record shows that despite the purported reevaluation of all line items, the Army again failed to evaluate CLIN 0232 (rate per mile for travel for maintenance outside normal working hours), apparently because the Army had previously failed to require each offeror to submit information regarding the distance of its engineer's residence to the government installation. Thus, the Army did not have sufficient information to evaluate that line item.

Briefly, the protester objects to numerous aspects of the evaluation and the belated rejection of its proposal after BAFOs and without discussion concerning the alleged defect in its proposal. We agree with the protester that the procurement was seriously flawed.

First, it is obvious that DCC attempted to offer a discount for maintenance outside normal working hours. The agency states that it was unable to evaluate this discount because it was speculative inasmuch as the agency did not know how many such calls for maintenance could be placed before the end of normal working hours. While we agree with the agency that the discount was speculative and could not be evaluated, the fact remains that DCC submitted a technically

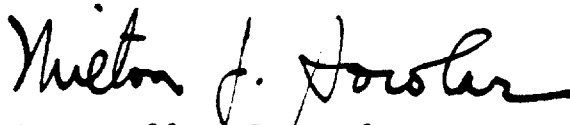
acceptable proposal which complied with all material terms of the solicitation; further, the speculative discount terms did not qualify the essential terms of its offer. Therefore, at most, the agency could have reasonably disregarded the questioned discount in its evaluation, even if discussions had failed to clarify this issue. However, we do not think that the agency could have properly rejected the entire proposal because of a flaw in the discount terms and thereupon fail to evaluate the proposal to see whether it was low even without the discount.

Moreover, to the extent that the Army had questions concerning the terms of the discount contained in DCC's initial and revised proposals, we think the Army should have discussed the matter with DCC during negotiations. The record does not indicate why the Army failed to do so. In this regard, where there are deficiencies or ambiguities in initial and revised proposals, attempts should be made to resolve the problem with meaningful discussions which point out the deficiency and give the offeror the opportunity to revise its proposal, including deficiencies in pricing. See American Management Systems, Inc., B-215283, Aug. 20, 1984, 84-2 CPD ¶ 199.

Second, as stated above, the record shows that the Army failed to evaluate CLIN 0232, travel costs, either during the initial evaluation or upon reevaluation. Yet the record shows that this is a cost which the government will pay during contract performance. Further, DCC offered a rate of \$.25 per mile while PSE offered \$1.40 per mile. In view of the closeness of the prices received, evaluation of this line item could determine the outcome of the procurement. Moreover, we see no reason why the Army should not obtain the necessary information and evaluate this line item properly.

Accordingly, we sustain the protest and recommend that the agency evaluate all line items, and specifically reevaluate offers with regard to the travel costs and line items previously omitted from the initial evaluation. If PSE is not the low offeror after evaluation, then its contract should be terminated for the convenience of the government.

The protest is sustained.

for 
Comptroller General
of the United States